

**Federal Defenders  
OF NEW YORK, INC.**

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By ECF

Honorable Alvin K. Hellerstein  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

*Appl is denied, with  
leave to re-apply if curfew  
is imprudential. 1-14-2020*

Re: *United States v. David Wagner and Marc Lawrence*, 19 Cr. 437 (AKH)

Dear Judge Hellerstein:

I represent David Wagner, and write on consent of the Pretrial Services Office to respectfully request that the Court modify the conditions of Mr. Wagner's release by removing the condition of curfew. The government opposes the modification request. A status conference is scheduled in this case for January 14, 2020, at 2:00 p.m.

**A. The current bail conditions.**

David Wagner's current bail conditions include the following:

- a \$500,000 personal recognizance bond co-signed by Mr. Wagner's wife and their three adult children;
- the property owned by Mr. Wagner located at Bonnet Shores Beach Club, Narragansett, Rhode Island;
- a curfew requiring Mr. Wagner to be home between the hours of 2:00 a.m. and 7:00 a.m., enforced by electronic monitoring;
- additional standard conditions, including pretrial supervision as directed by the Pretrial Services Office; limitation on travel outside of Rhode Island and the surrounding states; and the surrender of all travel documents.

The Court had initially set conditions that included the securing of three financially responsible co-signers for the bond. *See* Docket No. 7. On August 13, 2019, at the

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parties' request, the Court modified the conditions of release by replacing the three financially responsible co-signers with four family members, and adding the condition of curfew. *See* Docket Nos. 35 & 36. As of this writing, Mr. Wagner's wife and three adult children – who are the co-signers on the bond – are all employed.

On October 31, 2019, the Court reduced the hours of curfew to accommodate Mr. Wagner's new job at a call-center for the American Automobile Association. (Docket No. 42.) And on November 21, 2019, the Court extended the contours of Mr. Wagner's travel restrictions to allow him to travel to New Hampshire. All of these further modifications were on consent.

**B. The standard.**

Under the Bail Reform Act, a court must set the “least restrictive condition, or combination of conditions,” that will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(c)(1)(B). At any time, a court may “amend the order to impose additional or different conditions of release,” subject to the overarching goal of imposing the least restrictive combination of conditions necessary in a particular case. 18 U.S.C. § 3142(c)(3).

**C. The condition of curfew is more restrictive than necessary to reasonably assure Mr. Wagner's appearance.**

David Wagner was arrested on June 14, 2019. He was released on bail conditions on that day, and has been wholly compliant with all the conditions of release since that date. As noted above, the condition of curfew was added at the parties' request on August 13, 2019. Mr. Wagner has demonstrated, though, by his conduct over the past seven months, that the curfew condition is not necessary to reasonably assure his presence in court as required. And as noted above, Pretrial Services supports the removal of the curfew condition.

Accordingly, we respectfully request that the Court modify Mr. Wagner's bail by removing the condition of curfew.

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Thank you for your consideration of this request.

Respectfully submitted,

/s/  
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Ass't Federal Defender  
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cc: Jilan Kamal, Esq., by ECF  
Sagar Ravi, Esq., by ECF  
Francesca Tessier-Miller, U.S. Pretrial Services Officer, by e-mail  
Mr. David Wagner, by mail